

MAY 8, 2013
WAYNESBORO, PA 17268
PUBLIC INPUT SESSION RE: RENTAL
INSPECTION PROGRAM

Council President Jason Stains called the public input session to order at 6:15 p.m. with the following in attendance:

Borough Council Members – Benjamin Greenawalt, Craig Newcomer, Darrel Potts, Jason Stains, Wayne Driscoll and Michael Cermak

Mayor Richard Starliper was absent

Borough Staff – Lloyd R. Hamberger, II, Borough Manager
Dan Sheffler, Zoning-Code Enforcement Officer
Kevin Grubbs, Head of Engineering Services
Sam Wiser, Borough Solicitor (Salzmann Hughes, PC)
Jason Cohen, Assistant Borough Manager
Dave Martin, Fire Chief

Mr. Stains noted that the purpose of the meeting was to receive input from the public on a draft copy of a proposed ordinance regarding inspections for residential rental units located within the Borough.

Waynesboro Borough Council tasked a group of interested citizens to develop the framework for a rental inspection program. The group met many times over the next year, carefully developing a document which was put in ordinance form for the aforementioned purpose; and Mr. Stains thanked them for their efforts. Representatives of Borough Council, the Borough Solicitor, staff, and representatives of the committee have met over the last year and a half to review and modify the ordinance. Previously, Borough Council has held public input sessions for the purpose of reviewing the proposed ordinance. The document has been on public display at Borough Hall and is posted on the Borough's website. This meeting is the final input session on this matter.

Mr. Stains instructed that members of the public who were interested in giving input would be given one (1) five-minute block of time to present their opinions to Borough Council. The Chair reserves the right to extend an individual's time as needed, however it is recommended that anyone presenting information present it in a concise and direct manner. Individuals making a claim of fact, such as property values going up or down or any other quantifiable piece of data, were asked to submit to Council the basis on which that assertion was made. He reiterated that this is a public input session. Council will not comment, nor will they engage in discussion regarding pros and cons of the proposed ordinance; and the purpose is to receive the public's opinion

in this matter. Council will then take the comments into consideration and decide on a future course of action.

Members of the public presenting statements were reminded that there are two (2) documents involved in the development of the proposed ordinance. The first document is the International Property Maintenance Code, and the regulations in the proposed ordinance were based upon the Property Maintenance Code. The second document in this process is the ordinance itself. The ordinance was designed to provide a structure under which the provisions of the International Property Maintenance Code could be applied to rental units. Council assumes that any individual commenting has read the proposed ordinance.

Individuals wishing to give comments were asked to come to the lectern and state their name and address (if they are representing an organization, they were asked to state the name of such). They were also requested to sign the attendance sheet at the lectern for the written record. Additional written information will also be accepted after their input. Individuals were again reminded that they will have one (1) five-minute limit for comments, and they will not be permitted to add additional comments or question other speakers. It was also noted that this matter will be placed on the agenda for Council's next meeting (05/15 at 7:30 p.m.).

As noted previously, Mr. Hamberger reiterated that this ordinance was based on the International Property Maintenance Code, which is in effect now ... so properties are already subject to the rules and regulations thereof. The only difference is that this ordinance provides an organized and systematic way to provide inspections. Also, there have been concerns voiced in the past regarding properties which may not meet current codes. Waynesboro is an "old town" and most of the properties probably don't meet the current codes 100%, however many would be "grandfathered in" because they met the code that was in effect at the time. This ordinance is basically to ensure that properties are maintained; and if there are any structural problems or issues which are a safety hazard, then it would come into play. Costs for the program have not yet been set, however proposals were requested for fees. One (1) proposal was received, but has not yet been acted on. That proposal was \$85.00 for the initial inspection (the second inspection would be free), and any subsequent inspections would be \$65.00. He pointed out that if the property passes or has only minor issues (and is considered a "green" property), the next inspection would not be required for five (5) years.

Mr. Hamberger noted he has asked the Fire Chief to provide information on fires in the past. Chief Martin stated that he doesn't have a lot of statistics, but presented Council with pictures for review (as pictures say a thousand words).

President Stains noted that a member of the public, who could not attend because of a family emergency, asked for her concerns to be aired. Councilman Cermak noted that Betty Martin, E. Fifth Street is concerned that any costs involved in the program would have to be passed on to the tenants, and they are already having difficulty paying their rent. Her second concern is regarding people (inspectors) entering the tenants' homes

- she has assured them that (if the ordinance passes) she or a representative of the Borough would be with any inspectors entering their homes. She is opposed to the ordinance. .

Peter Good, an attorney with the Law Firm of Caldwell and Kearns in Harrisburg, PA - Mr. Good, who is counsel for both the PA Association of Realtors and the Pen-Mar Association of Realtors, has been asked by their associations to review the proposed ordinance. They have done so and are opposed to it for several reasons. While they feel it is well-intended as a means of providing public safety, they also feel it is utilizing the wrong means to accomplish that end. The end is public safety, but the means is an unequal application of structure that is going to apply differently based on who owns the property and where the owner of the property lives; and that is a starting point of treating landlords differently. For instance, landlords who live more than 15 miles from the Borough must hire a responsible property manager ... and who will make that call? It is absolutely true that this will increase tenants' costs, as any costs that landlords bear are passed on to the tenants. Conversely, there will be an increase in vacancies, because some properties (due to inspection criteria) may or may not qualify. It is his understanding that approximately one-half of all the housing units in the Borough are owner-occupied. There is no provision to inspect owner-occupied premises, only tenant-occupied premises ... so immediately half of the premises will not be inspected at all. The ordinance, he feels, is well-intentioned and detailed ... and in its detail, there is an onerous impact upon the Borough to follow its own regulations and provide large-levels of inspections to address an issue that is not necessarily a problem (the stature of the ordinance does not indicate that there is an existing problem that has to be addressed). In addition, the ordinance has exemptions - hotels, motels, group homes, motor homes, vacation homes - there is no reason why a public safety ordinance would exempt any types of homes or units. These ordinances are somewhat common within the Commonwealth, and they are mostly inputted into townships and boroughs that have (for instance) a large college population. Waynesboro is not necessarily a college town and there is no specific problem that has arisen in that regard. Another issue is regarding vehicles in disrepair - why would a vehicle in disrepair in front of an owner-occupied home be treated differently than one in front of a tenant-occupied home? The bottom line is that the standards imposed should be imposed across-the-board on all residential units within the Borough and not just rental units. While he doesn't think the ordinance is unconstitutional as a whole, he believes it should be re-drafted to fit the intended purpose - which is for public safety concerns as it relates to all residences, not just rental residences.

Jim Benshoff - Mr. Benshoff noted that he owns several properties in the Borough, all of which are in good repair. He was asked why he didn't have any input into the ordinance in the beginning, and stated it was because he was against it (and he wouldn't want to work on something that he doesn't want). He noted that if there is a problem with wiring in a single-family home and it burns down, it could affect his apartment building next door - and inspections will not be done on all residences. The premise of the program is based on the same story he has heard over and over again ... someone took an extension cord from one outlet to another, and there was a problem and they

kicked the tenant out ... and now he has to pay to have his rental units inspected. He doesn't agree with the ordinance and hasn't from the beginning.

Ronnie Martin, 66 State Hill Road - Mr. Martin stated that he has owned rental units in Waynesboro for more years than some of Council are in age, and he wonders how many rental units they own within the Borough. He asked how Council can tell him how to run his rental units when they don't own any? An \$85.00 inspection fee will affect the Trinity House, Mt. Vernon Terrace and others - and they can't afford it. He knows where there are two (2) problems, and "the rest of us are responsible". He asked Council to defeat the ordinance ... and to utilize the BOCA Code currently in effect. He stated they do not need inspections. He also stated that government is in private-industry business too much ... and he doesn't think they can run his businesses.

David Keithley, 418 Frick Avenue - Mr. Keithley noted that he has rental units in the Borough, all of which are in very good repair and could certainly pass any inspections. Not knowing the depth of the problem the Borough is dealing with, but assuming that analyses have been done with "problem properties" being documented, he noted that this ordinance penalizes everyone across-the-board. It is an inconvenience and expensive to every landlord and tenant in the Borough. Before it is passed, he suggested that Council be sure they are addressing a substantial problem, as the ultimate effects of it will change the nature of the "landlord business" in the Borough. If landlords abandon properties because they don't want to meet requirements of the ordinance, there may be more places in disrepair than what there currently are.

Kurt Oney, 212 S. Church Street - Mr. Oney noted that he has one (1) rental at 19 N. Grant Street, which is in very good repair. He doesn't agree with the ordinance, and feels it isn't fair for anyone.

Bonnie Zehler, Executive Director of Franklin County Housing Authority - Ms. Zehler stated that she is probably the largest landlord in the Borough, with 263 apartments that they own or manage. Her view of the ordinance is somewhat different than that of the other landlords, because they are regularly inspected - they have annual inspections at the 22-unit apartment complex and the remaining 159 units are inspected between 1-3 years (depending on the outcome of the inspections). Currently they are on a 3-year term, because they have had an excellent review of their public housing. That being said, Ms. Zehler noted that the cost of the proposed ordinance is somewhat onerous when you have a lot of properties (the cost for the rental inspection program at Mt. Vernon Terrace's 82 units would be \$6,970 just to manage that inspection protocol, because there is no outside organization reviewing that site). Mt. Vernon Terrace is in good repair, however, and she feels it would probably be on the five-year cycle. If the ordinance is passed, she requested that Council consider "laddering in" the units so that a landlord (whether he has 10 or 263 apartments) can adjust to the cost of the inspection process. She noted it would be a lot of money for Mt. Vernon Terrace to pay every five (5) years, which is a percentage of the rent that is not budgeted for. Their other housing is inspected, however every unit is not inspected; and she encouraged Council to give thought to considering all of their units for exempt status. They do not

have the ability (like other landlords) to raise rents in the majority of their units (rents in only 82 of the 263 can be raised to deal with cost changes). If they were paying for every unit of public housing, it would cost \$13,515. She feels these numbers are important to hear when considering the application and how the ordinance will be implemented. Ms. Zehler also stated that the ordinance is "somewhat reasonable" in terms of how the inspections would be done (the cost of the initial inspection includes the second one, and then re-inspection is not required for five more years). Regarding the inspection process itself, however, she noted that smoke detectors are a "huge problem" for landlords, because many tenants will dismantle them. When the inspections are done, that is a real issue that can add up violations. She shared that in their federal program, they are allowed to insert batteries to alleviate that type of violation. She suggested that "reason and balance" should be used during the inspections.

Kristyn Benedict, 103 State Hill Road - Ms. Benedict noted that she is a tenant herself, but also a realtor in the Borough. She handles a lot of rentals and helps many tenants find places to go. The problem she sees with the proposed rental inspection program is that it will cause increases that will be passed along to the tenants. She noted that people call her office everyday looking for rental units under \$500/month ... but many of the places that fit that bill won't pass the inspections and many people won't be able to find a place to go.

Richard Durham, Kearneysville, WV - Mr. Durham noted that he is an out-of-town investor, of which (he feels) there are quite a few. He provided a copy of correspondence presented to Council previously, in which he outlined several pitfalls for the Borough and tenants as well as additional problems/great costs for the landlords. He pointed out that more than half of the Borough's residents live in rental properties; and stated that "Mr. Martin was right to point out the private property ramifications of this proposed ordinance". He feels this is a burden to both the tenants and landlords (who have large amounts of capital invested in providing this service). Personally, he added that providing rental units has not been a productive business. With all due respect to tenants who are their paying rent on time and taking care of the properties, he noted there are many others who are not. He recalled reading in one of the local newspapers "that the Borough feels they need more tax money". Mr. Durham stated it is not appropriate, and may not be constitutional, to raise more tax monies on one class of individuals (landlords). From his viewpoint and in looking for the ordinance around town and in the newspaper, he feels there have been substantial failures of due process which would be a problem for passage or attempt at passage of this proposed ordinance. He also noted that the community impact, sentiments and comments have been very unfavorable (generally speaking) to this ordinance; and in many communities, the government would not be successful in passing an ordinance in the absence of favorable community comments. On a positive note, however, Mr. Durham noted that Waynesboro is a nice community - there are nice parks, nice music, a nice museum, and a beautiful view of the Blue Ridge Mountains. He stated that this should be a real nice town ... but from his experience, there is a "pretty close to oppressive business atmosphere in this community". He feels it would be better for Council to say thank-you

to the folks who are providing this service for about half of the residents, and use the existing BOCA Code instead of dealing with this proposed ordinance any further.

Paul McCarney, 439 W. Fifth Street - Mr. McCarney noted that he has voiced his comments previously and doesn't need to re-hash it all. He stated that a few things in this ordinance "stick out" that tell him that the Borough of Waynesboro "wants to own our property"; and he is totally against that ... he bought it, he owns it and he runs it. The first page indicates that hotels, motels and bed & breakfasts will be exempt, and he doesn't understand why - they can have fires, damage, dirt ... just like anyone else. Page 11 indicates that motor homes, vehicles, trailers, etc. shall be parked on a gravel parking lot parallel to the driveway, and he doesn't think the ordinance should tell him where he can tell his tenants to park their vehicles. Fences have to be repaired within 14 days - but if there was a storm and you are waiting on your insurance company, 14 days go by very quickly. He added that many elderly people in town rely on rentals to "keep them afloat" - some may need repair, but people can't afford it because they rely on social security and rents coming in.

Craig Mahrle, 84 W. Gay Street - Mr. Mahrle noted that he has expressed his opinion on the ordinance several times in the past. He previously heard that a reason for this ordinance was because tenants were afraid to report problems because of landlords' retaliation; and he had presented Council with a VA law which made that illegal. Another reason he heard for the ordinance was that, although we are subject to the International Property Maintenance Code, there is no mechanism to enforce it. He read excerpts from Sections 104.1 thru 104.6 of the IPMC, noting he feels that the mechanism for enforcement is in the IPMC itself. Additionally, of the fires that have occurred in the Borough that the Fire Chief brought documents about, are those because of items that would actually be inspected in this program - i.e. wiring in attics (would the inspector be crawling into the attics to find such wiring?)

Ray Easterday, Fayetteville, PA - Mr. Easterday noted that he has one (1) property in Waynesboro, but went through the inspection process when he obtained a building permit in 2006. He hasn't spent a lot of time reviewing the ordinance, but it seemed that there was very little (if any) strategy on how his property would be inspected. He noted that he has experience in doing inspections (30 years with the federal government, doing computer security and inspections around the world) and there is no criteria or checklist to evaluate/measure what a property is in compliance with. He "Googled" Rental Ordinance, and found a wealth of information including a U.S. District Court's legal decision on access to property - and it is not up to the landlord or the inspector ... the tenant must grant access. Accordingly, some thought needs to be put into the access of a property; and he suggested that the best time to do an inspection is when a property is being rented. In fact, the Borough should consider certifying "rentability" - if the property is not suitable to be rented, it should be stamped so and removed from the market. He added that most of these type of ordinances are at the County or State level (or even a large city), and this would probably be the first one in a Borough. Council should also consider the impact to rental properties within the town vs. outside the town, as he feels there may be a lot of people getting rental properties

out-of-town, which will affect the tax base. He added that if he were writing a rental ordinance, he would find someone who does it well and copy what they've done instead of trying to develop his own.

Darwyn Benedict, ReMax, 47 W. Main Street - Mr. Benedict noted that he has spoken numerous times before Council regarding this matter. Many aspects were covered this evening, but the amount of paperwork involved was not mentioned (or who will be responsible for collecting/maintaining that paperwork). Each property owner must provide the Borough with insurance policies and proof of providing that to each renter, etc. Inspection fees were also mentioned this evening, but there was no mention of an application fee. Counsel (for the Realtors' Associations) spoke about legal issues. Mr. Benedict noted that he previously provided Council with a sheet entitled "Position of Pen Mar"; and Council received approximately 20 emails from Pen Mar's members. He was informed, however, that Council members spoke with some of these individuals who stated they knew nothing about it. He personally went to each of these individuals and obtained their initials on the sheet, which he provided to Council at this time for the record. He clarified that everyone who initialed (19 of them) are opposed to the Rental Inspection Ordinance. He added that several others are from St. Thomas, and they stated that their email should be legally recognized enough. Speaking for the group, Mr. Benedict stated that the ordinance is not right for a vote for approval. As it is currently written, it is not good for everyone in the Borough.

Dale Martin, Martin Investment Group, 8964 Capitol Hill Road - Mr. Martin stated that they bought their first property in 2002. At that time, everyone told him how easy it would be to have tenants pay off the building and make money. They bought more properties, and today they have nine (9) buildings in Waynesboro (67 rental units). But no one told him about tenants who didn't pay their rent, or who trashed apartments he had just remodeled, or how hard he would have to work (with no money left for himself) in order to make the rental business "go". He stated that if they hadn't had other income, they wouldn't have made it. In fact, this is the first year they showed a small profit on their rental business. He is concerned about the \$85/unit inspection fee for landlords, and about the ability of tenants to pay their rent. He stated that when they entered the rental business, they committed to providing good housing, a clean environment and upgraded buildings. They bought buildings that were in bad shape and have spent thousands of dollars upgrading them. They also own a building in Hagerstown, for which they pay inspection fees of \$50/unit; but those inspections are done when a unit is empty (every 3 years or something to that effect). In short, he is concerned about the financial impact this ordinance/program will have on both landlords and tenants.

Laura Kline, Fayetteville, PA - Ms. Kline noted that she owns one (1) rental unit in the Borough. She previously addressed a few of her concerns to Borough Council via written correspondence; and she appreciates their consideration, but will not reiterate those comments. She remarked on a statement made at one of the February meetings (which was probably the general consensus) whereby if a building is owner-occupied, "it is probably okay". She understands that reasoning, but cautioned Council in making

such an assumption. She knows of a building in the Borough that is owner-occupied, with a second floor business tenant who has endured the last two winters of heat in the mid-50's or definitely no more than 60's (which is a direct violation of the proposed ordinance). Unfortunately that will be "okay", because the building is owner-occupied. There was also a very serious sewer problem in the basement that was left for several weeks before it was repaired (and several months before it was cleaned). She understands that Council is trying to protect certain few tenants ... but cautioned them not to assume, because a building is owner-occupied, that it is in accordance with the ordinance currently in effect or about to be imposed.

Tank Minnich - Mr. Minnich noted that he is "against all of this". It is "too much government" ... and he doesn't need anybody telling him to do anything with anything he owns, because it is his.

Patrick Burns - Mr. Burns stated that he arrived in the Waynesboro area in 2005, as a retired Army veteran. He lived at various residences (mentioning Fourth Street and N. Potomac Street) and has been disrespected by "a lot of landlords". He noted that he understands the business and inspections, having traveled the world for 42 years, but many people are intimidated. There are some good landlords, but many do not follow the law. He spent approximately four years on the committee, with at least eight other people who are invested in Waynesboro, because he wants Council to know what is going on with the low-income people who live in Waynesboro. It would be nice if landlords followed the law and respected their tenants, but a lot of them do not. Mr. Burns noted that this ordinance means "safety, respect and responsibility" to him; and each member of Council represents the low-income people who cannot defend themselves.

President Stains thanked the individuals who provided input this evening. The matter will be the agenda for a vote by Borough Council at their next meeting (05/15 at 7:30 p.m.).

The meeting adjourned at 7:15 p.m.

Respectfully Submitted,

Melinda S. Knott
Administrative Assistant